

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

## **PROCEDURAL ORDER**

September 15, 2014

In my preliminary review of the Memorandum (Dkt. No. 392) submitted in support of the defendant's motion for judgment of acquittal or alternatively for a new trial (Dkt. No. 342), I note the defendant relies upon an asserted lack of proof that he was aware that a thumb drive was included in the back pack recovered in the landfill. *Id.* at 33-34. In light of the pendency of *Yates v. United States*, (S.Ct. 13-7451) before the Supreme Court of the United States - a matter now scheduled for oral argument on November 5, 2014 - and in an effort to sharpen and refine the implications to be drawn from the asserted lack of proof regarding the Defendant's knowledge concerning the thumbdrive in this case, I suggest that the government in its response should fully address all aspects of the following question:

Given the potential that the Supreme Court may adopt the contention pressed by Petitioner in *Yates* that the term "tangible object" in 18 U.S.C. § 1519 is limited to "a thing used to preserve information, such as a server, computer, or similar storage device", *Yates v. United States* (Brief of Petitioner), 2014 WL 2965254, is proof of knowledge that the backpack disposed of contained a thumb drive necessary in this case to support a conviction under § 1519 as the object of a conspiracy (Count One), or substantively (Count Two)? See generally *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994).

/s/ Douglas P. Woodlock

DOUGLAS P. WOODLOCK

UNITED STATES DISTRICT JUDGE